

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY**

In the Matter of

Petition for Arbitration of an
Interconnection Agreement Between
Charter Fiberlink MA-CCO, LLC, and
Verizon-Massachusetts Inc.

D.T.E. Docket No. 06-56

PROTECTIVE AGREEMENT

This Protective Agreement ("Agreement") is entered into this 5th day of September 2006 by and between the parties signing below, Charter Fiberlink MA-CCO, LLC ("Charter") and Verizon New England Inc., d/b/a Verizon Massachusetts ("Verizon"), all of whom are parties in the above-captioned proceeding before the Department of Telecommunications and Energy ("Department").

WHEREAS, documents, data, information, studies and other materials submitted to the Department and/or provided to the parties in the course of the above-captioned proceeding may be regarded by the producing party to represent or contain confidential or proprietary information; and

WHEREAS, the parties hereto wish to ensure that such confidential or proprietary information is afforded protection from unauthorized disclosure, while permitting parties in the above-captioned proceeding appropriate access to such confidential or proprietary materials.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the undersigned parties agree as follows:

1. **Non-Disclosure.** Documents, data, information, studies and other materials, including electronic media, submitted to the Department and/or furnished to the other party either on a producing party's own initiative or pursuant to interrogatories, document requests, information requests, record requests, subpoenas, depositions, other modes of discovery, or arbitral order that are designated by the producing party to be a trade secret, privileged, proprietary, or confidential (hereinafter referred to as "Confidential Information") shall be provided pursuant to the terms of this Agreement, and shall be treated as confidential by all persons having access thereto. Except with the prior written consent of the party originally designating the information as Confidential Information, or as hereinafter provided under this Agreement, no Confidential Information may be disclosed to any person, except as permitted under paragraph 3. No person with access to any Confidential Information shall use such information for any purpose other than the purpose of preparation for and conduct of this proceeding and related proceedings, as set forth in paragraph 8. Every person granted access

to Confidential Information shall keep the Confidential Information secure and shall not disclose it or provide access to it to any person not authorized in accordance with this Agreement.

2. Marked Confidential Documents. Documents and other materials containing or reflecting Confidential Information shall be marked as "CONFIDENTIAL" or "PROPRIETARY" to signify that they contain information believed to be subject to protection under the Department's rules and this Agreement. For purposes of this Agreement, the term "document" means all written, recorded, or graphic material, including electronic media, whether produced or created by a party or another person (including persons not a party to this case), or whether produced pursuant to the Department's rules, document request, information request, record request, subpoena, agreement, or otherwise. Documents that quote, summarize, or contain materials entitled to protection will be granted status as a marked confidential document, but, to the extent feasible, shall be prepared in such a manner that the Confidential Information is not commingled with and is bound separately from documents that are not entitled to protection under this Agreement.

3. Permissible Disclosure. Notwithstanding paragraph 1, Confidential Information may be disclosed subject to the provisions of subparagraphs 3(a) and 3(b), to the following persons if disclosure is reasonably necessary for such persons to render professional services in this proceeding: counsel of record for a party in this proceeding, including in-house counsel who are actively involved in the conduct of this proceeding; partners, associates, secretaries, paralegal assistants, and employees of such counsel; and in-house employees (such as economists, operational, technical, and regulatory personnel) who are actively engaged in the conduct of this proceeding, provided that they are under the supervision of counsel. Such documents may also be disclosed to relevant employees of regulatory agencies, Department employees involved in this proceeding, and to any person designated by the Department in the interest of justice, upon such terms as the Department may deem proper.

(a) Notwithstanding any other provision of this Agreement, before any disclosure shall occur, any individual (other than a Department employee) to whom Confidential Information is disclosed must certify in writing that he/she has read and understands this Agreement, agrees to abide by its terms, and understands that unauthorized disclosure of the Confidential Information is prohibited. A copy of each such certification shall be provided to the Department and the party that designated the information confidential. (See Attachment A).

(b) Before disclosing Confidential Information to any person who is listed in paragraph 3 (other than an attorney (including in-house counsel), secretary, paralegal assistant or other employee supervised by such attorney) and who is employed by a competitor or potential competitor of the party that so designated the information as Confidential Information, counsel for the party seeking such disclosure shall give at least five (5) business days' advance notice in writing to the counsel who designated such information as Confidential Information, stating the names, job titles, and addresses of the person(s) to whom the disclosure will be made, identifying with particularity the documents to be disclosed, and stating the purpose of such disclosure. If, within the five-day period after notice is provided, a motion is filed objecting to the proposed disclosure, disclosure is not

permissible until the Department has denied such motion and disclosure is permitted. Any such motion shall be served by hand, by electronic mail or by facsimile on the party seeking such disclosure.

4. Access to Confidential Information. Any party producing Confidential Information pursuant to this Agreement shall provide a copy to counsel of record for all the parties who have executed the certification described in subparagraph 3(a), except where such confidential materials are so voluminous that providing copies would impose an undue burden. In such cases, the party producing the confidential material shall designate a Boston location and such other locations as may be convenient at which the other party and the Department shall be permitted access to and review of requested Confidential Information pursuant to the other terms of this Agreement, or pursuant to alternative arrangements agreed upon by the parties and the Department. Any such access or review may be limited to regular business hours after reasonable notice by the requesting party. A party may obtain copies of any such voluminous confidential material at its own expense upon request.

5. Highly Sensitive Confidential Information. Nothing contained herein shall be construed as requiring a party to produce all documents which it designates as Confidential Information, should the providing party allege, and the Department determine, that any Confidential Information to be provided pursuant to this Agreement is of such a highly sensitive nature that access to and copying of such Confidential Information as herein set forth would expose the providing party or any of its affiliates to an unreasonable risk of harm. Within two (2) days of receiving a request which in the providing party's view seeks such highly sensitive information, the providing party shall object to the production of such information and shall file with the Department and serve on the other party a motion requesting that the items of Confidential Information in question be declared to be highly sensitive Confidential Information. Notwithstanding the preceding sentence, should Verizon decide to invoke the procedures described in this Paragraph 5 it will do so by providing notice to Charter and filing a motion with the Department on or before September 6, 2006. The motion must conform to the requirements and standard set forth in G.L. c. 25, § 5D and shall include the special protection and treatment desired, the grounds why the Confidential Information in question needs special protection and a description of the items of Confidential Information alleged to be highly sensitive and confidential. The motion must also include an affidavit from a party's representative affirming that access to the Confidential Information under the other terms of this Agreement would be likely to harm the providing party and specifying the type of harm that would be suffered. The non-moving party will have two (2) business days to respond in writing to the motion, which response must include a description of the need for access to such Confidential Information and why such a need cannot be satisfied with other information, whether Confidential Information or otherwise. The moving party shall specifically request that the Department determine the status of the Confidential Information in question and the treatment that should be afforded to it as expeditiously as possible.

6. Prohibited Copying. If Confidential Information contains information so sensitive that it should not be copied by anyone, it shall bear the additional legend "Copying Prohibited." Application for relief from this restriction against copying may be made to the Department, with notice to counsel so designating the Confidential Information.

7. Confidential Information Filed in the Record.

(a) Confidential Information may be offered in the record of this proceeding, provided that such Confidential Information is furnished under seal. The party submitting Confidential Information shall ensure that each page bears the legend "CONFIDENTIAL" or "PROPRIETARY."

(b) If counsel for a party desires to use or place any Confidential Information provided by the other party on the record in this proceeding, then counsel shall notify the providing party at least forty-eight (48) hours prior to introduction of the documents to be used, or, in the case of cross-examination, at least twenty-four (24) hours in advance, or, in either case, as soon as otherwise practicable. The providing party will notify counsel for the party intending to introduce such confidential material at least twenty-four (24) hours prior to the proposed introduction of the documents, if practicable, or, in the case of cross-examination, as soon as practicable, which portion, if any, of the documents so identified shall be placed in a sealed record. Documents, or any portion thereof, not designated to be placed in a sealed record shall be available for use in the public record.

(c) The parties will request the DTE to instruct the court reporter(s) as to: (i) the nature of certain testimony with respect to Confidential Information and the need to start a separate transcription for testimony or discussion on the record of Confidential Information; (ii) the need to mark such transcriptions as "Confidential Subject to Protective Agreement;" and (iii) the need to seal and file such transcriptions with the Department and provide copies only in a manner consistent with this Agreement. Such transcriptions shall in all respects be treated as Confidential Information under this Agreement.

(d) The parties will request the DTE to order that, with regard to the parties, no person other than those who have executed the certification described in subparagraph 3(a), agreeing to be bound by this Agreement, shall be permitted to hear or review testimony given or discussion held with respect to Confidential Information.

(e) The parties will request that the DTE segregate all transcripts, exhibits, responses to discovery requests, prefiled testimony and other information which have been determined by the Department to be or contain Confidential Information from the balance of the record in this proceeding and placed in a sealed file or otherwise given appropriate protection against disclosure consistent with this Agreement.

8. Use. Persons obtaining access to marked Confidential Information under this Agreement shall use the information only in the conduct of this proceeding, other Department proceedings arising or resulting from this proceeding, and any Federal Communications Commission or judicial proceeding arising from this or such other Department proceedings, and shall not use such Confidential Information for any other purpose, including, but not limited to, business, governmental, commercial, or other administrative or judicial proceedings. Persons obtaining access to marked Confidential Information shall not use such Confidential Information if the Department rules that such Confidential Information is not admissible, or not relevant to the issues or matters pending in this proceeding. Persons obtaining access to Confidential Information under the terms of this Agreement may disclose, describe, or discuss Confidential Information made part of the record in any pleading filed in

this proceeding, provided that such pleading is marked confidential and filed under seal, and provided that a separate public version is filed in which all Confidential Information is redacted. Persons filing pleadings under seal, based on Confidential Information provided by others, shall serve such pleadings by hand or over-night delivery on the party originally requesting confidential treatment of the underlying information. Persons desiring to use Confidential Information in other Department proceedings arising or resulting from this proceeding, and any Federal Communications Commission or judicial proceeding arising from this or such other Department proceedings must provide the Confidential Information under seal to protect its confidentiality.

9. Right To Contest Confidential Treatment and Admissibility. Neither this Agreement, nor the execution of any certification pursuant to this Agreement, shall in any way prejudice or otherwise constitute any waiver of the rights of any party at any time to contest any assertion or to appeal any finding that specific information is or is not Confidential Information or that it should or should not be subject to the protective requirements of this Agreement. The parties to this proceeding retain the right to question, challenge, and object to the admissibility of any and all Confidential Information provided under this Agreement on any available grounds, including but not limited to competency, relevancy, and materiality. Any party at any time may seek, by appropriate pleading, to have documents submitted under this Agreement removed from coverage of such Agreement. In the event the Department should rule that any information is not appropriate for inclusion in a sealed record, no party shall use such information in the public record for two (2) business days, in order to permit the providing party an opportunity to seek a stay or other relief.

10. Subpoena by Courts or Other Agencies. If a court or another administrative agency subpoenas or orders production of marked Confidential Information which a party has obtained under terms of this Agreement, such party shall promptly notify the party who designated the document as confidential or proprietary of the pendency of such subpoena or order.

11. Client Consultation. Nothing in this Agreement shall prevent or otherwise restrict counsel from rendering advice to their clients regarding the above-captioned proceeding in which Confidential Information is submitted and, in the course thereof, relying generally on examination of marked Confidential Information submitted in this proceeding; provided, however, that in rendering such advice and otherwise communicating with such client, counsel shall not make specific disclosure of any item so designated except pursuant to the procedures of paragraph 3 above.

12. Termination. The provisions of this Agreement shall terminate three (3) years after the conclusion of the above-captioned proceeding.

13. Responsibility of Attorneys. The attorneys of record are responsible for employing reasonable measures to control, consistent with this Agreement, the distribution of copies of marked confidential documents. Parties shall not duplicate any marked Confidential Information except working copies and for filing at the Department under seal.

14. Return of Confidential Documents. The Confidential Information is at all times the property of the disclosing party. Within two weeks after final resolution of this

proceeding (which includes administrative or judicial review), parties that have received Confidential Information shall either return all copies of such information in their possession or control to the party that submitted the documents, or destroy all such Confidential Information and certify to the party that submitted the documents of said destruction.

15. Penalties. In addition to any other penalties or remedies authorized under the federal Communication Act of 1934, the Department's regulations, Massachusetts statutory and common law or other applicable source of law, any failure to abide by the terms of this Agreement may result in such additional measures as may be imposed by the Department.

16. Binding Agreement. This Agreement shall be effective and binding upon all parties signing it upon its execution by two or more parties. Consistent with Section 19, the parties may enforce the terms and conditions of this Agreement by petition to the Department.

17. Entire Agreement; Amendment. This Agreement constitutes the entire agreement of the parties hereto and supersedes any drafts, negotiations, oral understandings or representations that preceded the execution of this Agreement. This Agreement shall not be amended except in writing signed by each party hereto.

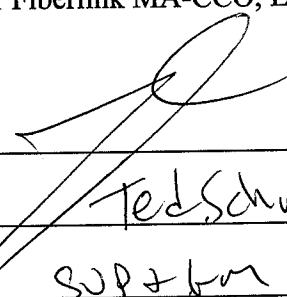
18. Waiver. A waiver of any provision of this Agreement on any single occasion by any party shall not operate as a waiver of such party of such provision at any other time.

19. Dispute Resolution. The parties hereto agree that in the event of any dispute relating to the interpretation, application or performance of this Agreement, either party hereto may request that the Department resolve such dispute.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as a sealed instrument by their duly authorized representatives.

Charter Fiberlink MA-CCO, LLC

Verizon New England Inc., d/b/a Verizon
Massachusetts Inc.

By:  _____

By: _____

Print: Ted Schreier

Print: _____

Title: SVP & Gen

Title: _____

Date: 9/5/06

Date: _____

ATTACHMENT A

CERTIFICATION OF COMPLIANCE WITH PROTECTIVE AGREEMENT

I have received a copy of the Protective Agreement in D.T.E. Docket No. 06-56. I hereby certify that I have read this Protective Agreement and agree to comply with and be bound by the terms and conditions of this Protective Agreement. The signatory understands, in particular, that unauthorized disclosure, or the use of the information for competitive commercial or business purposes, will constitute a violation of this Protective Agreement.

SIGNATURE:

NAME PRINTED:

TITLE:

ADDRESS:

REPRESENTING:

EMPLOYER:

DATE:
